of allegedly planned political assassinations. Dubbed "tyrannicides," these efforts worked under the assumption that it is in the best interests of this country to dispose of the leaders we feel are harmful or undesirable.

Unfortunately, some have felt that, in certain cases, tyrannicide is justifiable. This, in my mind, raises certain doubts as to the morality of our foreign policy implementation.

But, aside from the morality, there is the question of true national interests. Tyrannicide is merely an attack at the surface of that which annoys us, or that which we disagree with. It is an attack at the tip of the iceberg, so to speak. What we must realize is that it does nothing to quell, satiate, or change the factors which brought about such a situation.

Second, there is the question of where we draw the limits.

Recently, I read an editorial in the Yankton, S. Dak., Press and Dakotan which quite accurately addressed these concerns. I think it is worthy of my colleagues' attention.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TYRANNICIDE: PERILOUS POLITICS

As the rumors and suspicions and allegation that the Central Intelligence Agency, with the knowledge of American presidents, plotted or perpetrated the assassination of certain foreign heads of state, a number of commentators have questioned whether this kind of secret, "gunpoint diplomacy" is necessarily and always evil.

Calling it not murder by tyrannicide columnist John P. Roche asks: "Would it have been unconstitutional, immoral and generally dreadful if some American intelligence agent had put a 30-caliber slug into Hitler's skull, in, say, 1937?"

On the face of it, it might appear that the 20th century would have been a far happier one had someone dispatched Herr Hitler when he first raised Nazism's ugly head. The same could be said about Torquemada and the 15th century, or Genghis Khan and the 12th century.

The argument collapses, however, as soon as we consider the death of a leader like Abraham Lincoln. Yet his assassin fervently believed that he was ridding the world of a tyrant. The student who assassinated the Archduke of Austria in 1914 and precipitated the First World War no doubt thought of his act as heroic.

Of course, neither of these "tyrannicides," nor others which have dramatically altered history, was the official act of an organized government. They were the work of fanatic individuals. Nevertheless, it would be perilous if we came to believe that even in the case of Hitler we can set up a standard of morality for governments separate from that demanded of individuals in society.

Yes, it can be argued that it would have been a good thing if someone had killed Hitler in 1937. Perhaps Stalin, too. But what about Mussolini? And Franco? Once embarked on such a course, where would we stop?

The assassination of Fidel Castro in 1962 or 1963 would not have changed the factors that bfought him into power in the first place, any more than the assassination of President Diem of South Vietnam was of benefit to that tragic land. And as for Adolph Hitler, there were other, nonmurderous means of dealing with him in 1937, if world statesmen had had the guts to stand up to him.

One feature distinguishing the American political experiment from all others before it was that it provided a peaceful means for changing rulers. If we ever reach the point where we practice a different morality in our dealings with foreign nations than we practice at hime, if we adopt "tyrannicide" as a valid, even if only a last resort, method of furthering national polity, we will have assassinated all that is best in ourselves.

WITHDRAWAL OF A COSPONSOR

S. 1

Mr. BAYH. Mr. President, I ask unanimous consent that my name be removed as a cosponsor of S. 1, a bill to codify, revise, and reform title 18 of the United States Code; to make appropriate amendments to the Federal Rules of Criminal Procedure; to make conforming amendments to criminal provisions of other titles of the United States Code; and for other purposes, and that all subsequent printing of S. 1 reflect this request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. I further request unanimous consent to print in the RECORD a statement I made during the recent recess detailing the reasons for my decision to remove my name as a cosponsor of S. 1.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR BIRCH BAYH ON THE CRIMINAL CODE

I originally joined as a co-sponsor of S–1 because I was convinced that codification of federal criminal law was needed and because I believed that as a co-sponsor I would be in a better position to see to it that those sections of the draft bill with which I took exception were modified. In my statement of co-sponsorship, I made it quite clear that I could not accept some sections of the draft bill and would seek to amend it.

I have now become convinced that I misjudged the role I could play that would be most effective in strengthening those basic civil liberties which I have stood for throughout my public career.

During the preliminary discussions on this massive bill which runs to 735 pages, this strategy appeared to be working with some success. A dozen changes in the bill were agreed to by the Subcommittee and the Department of Jutice. But the more people I talked with around the country about this bill, the more I became convinced that my initial judgment that I could play the most effective role by working from the inside as a co-sponsor was wrong. For several reasons, S–1 has come to be viewed by many people as a symbol of repression.

In its present form, the bill does have features which are repressive. This country has just witnessed an effort by the most powerful officials in the land to violate the basic rights of individual Americans. I fear that this temptation will not pass with Watergate. As the great Justice Louis D. Bandeis once observed, "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." Those civil liberties and civil rights we cherish can be lost today or tomorrow a law at a time or a phrase at a time through the action of men of good intention who lack understanding.

Throughout my public life I have fought to protect the rights of individual Americans. At this moment in our history when I believe we must rededicate ourselves to the preservation of those basic rights which have kept America and Americans free, I cannot associate myself with a measure which has become a symbol of repression to so many.

While I will ask that my name be removed from the current draft bill, I fully intend to press my efforts to see to it that the bill is modified to take account of those sections which I have indicated I cannot support. I continue to believe that codification is a highly desirable goal, and I will work toward that end, but if my amendments are not agreed to, I will do everything I can to see to it that the bill is defeated.

I would like to outline for you in some detail—first, why I believe codification is desirable, second, the changes in the bill that we have already achieved and, third, the amendments which I will propose.

WHY IS CODIFICATION NEEDED?

The nearly two hundred years of American legal history have seen us evolve from a nation bound by the judicially developed common law of Great Britain to one in which criminal sanctions, if they are to be imposed, must be specifically enacted by the people's representatives in federal and state legislative bodies.

In the federal system, however, this legislative process has been one of reaction and accretion. A particular problem is observed and is regarded as serious enough to merit criminal sanctions and then a statute is enacted which addresses itself, often very narrowly, to the precise problem presented. As a result of this unsystematic process of evolution, serious gaps in the coverage of our laws exist. At the same time many of our present criminal statutes suffer from unnecessary overlap. The punishments provided are often inconsistent or outmoded. A number of statutes dealing with identical kinds of conduct, yet worded differently, are interpreted in varying and frequently conflicting fashions.

Instead of a criminal code, we have developed something akin to what might be termed "Collected Federal Criminal Statutes." But even that term is somewhat misleading for it cannot be properly said that the federal criminal laws are collected in any one conveniently accessible place. Criminal offenses exist in virtually all of the fifty titles of the United States Code. One who wished to discover whether a certain type of conduct was the object of a federal offense would have to rely on the index to those fifty titles and his own skill as a researcher in order to act with total certainty. While ignorance of the law ought not to constitute a general defense, it also ought not to be encouraged by the manner in which the laws are preserved. Yet, the present disorganized scattering of criminal offenses does precisely that.

Our present criminal statutes are scattered throughout the 50 volumes of the United States Code; they suffer from unnecessary overlap; statutes dealing with identical kinds of conduct, yet worded differently, are interpreted in varying and frequently conflicting fashions. A few examples:

There are several dozen separate statutes in the present law which punish theft. Most commonly the distinction in their coverage is based on the nature of the federal government's jurisdiction. Thus, one who steals a truck containing mail while it is parked on an Indian reservation may be charged with three separate crimes, i.e., theft of the mails, robbery on the Indian reservation, and the Deyer Act. These three offenses have widely

varying sanctions attached to them and the choice is left to the prosecutor to charge whichever he pleases, or all three for that matter. There is no mechanism to review the prosecutor's actions;

The various Watergate offenses would not have been prosecutable federally had they not happened to occur in the District of Columbia, even though the intent was clearly to disrupt and influence a Presidential election. The new code rectifies this situation;

One section of present law punishes the breaking into a vehicle or vessel of the Post Office with a maximum penalty of three years, while breaking into a post office building carries a five year penalty;

One provision of present law punishes making a false statement to a government agency under some circumstances as a five year felony, yet another section adds an additional charge carrying a three year penalty if it happens to involve the Department of Housing and Urban Development; and

Another provision makes it a federal offense to engage in a conspiracy to deprive a citizen of his rights under the Constitution, yet there is no substantive offense actually punishing one who does deprive a person of his federally guaranteed rights.

There is, therefore, a clear need for codification in order to limit the extent to which conduct is criminalized and in order to provide notice as to what the criminalized conduct is. Our criminal law represents the most serious sanction that society can inflict upon its members. That system of sanctions ought to operate under conditions of simplicity, clarity, and fairness. The very nature of the way in which current law developed argues strongly that these essential elements have been glossed over.

The criminal law is not simple when only a trained and skilled individual can discover where it may be found. It is not clear when a common word, "willful" for example, has one meaning in one statute and a very different meaning in another, the difference depending in large part on the vagaries of the language at the time the statute was enacted and the meaning of the term to the particular legislators responsible for the legislative history. It is in some sense unfair to have vital questions of law depend for their answer upon the judicial circuit or district in which the prosecution is instituted as is the case with the corroboration requirement in rape cases, for example.

Moreover, the system is cumbersome for the prosecutor and this leads to situations which, while not violative of basic rights, are certainly undesirable if they can be avoided. New crimes must be squeezed into old statutes with the same effort as putting square pegs in round holes.

A statute designed to prevent large-scale frauds through the use of the mails must be made to fit the offense of using stolen credit cards. A law enacted to protect blacks against official oppression during the Reconstruction period is the only one available to charge National Guardsmen alleged to have wantonly taken the lives of students at Kent State. Respect for law naturally decreases when a jury, having heard evidence of a crime appearing to be murder, is charged by the judge in terms of an offense described as the deprivation of a civil right under color of law.

Revision and reform then are also vital needs within the Federal criminal structure in addition to codification. Uniformity and simplicity of approach and language lead to wider understanding of the meaning and content of the law. Elimination of anchronistic requirements and resolution of ancient and trivial differences will inevitably lead to a greater belief in the wisdom of the law and consequently a greater faith in the fundamental concept that this society is not only one of laws, but of just laws as well.

Codification could be at its simplest level a process of bringing our criminal statutes together in a single title of the United States Code with the ultimate goal of easy access to the law. But to do only this would be to deal with only one part of the problem with the federal criminal law. Since, as I have noted, there are in fact many other problems associated with our present unstructured collection of criminal statutes, the process of codification ought also to involve the joint processes of revision and reform so as to modernize and make more fair that area of law—the criminal code—in which our most basic liberties and values are sought to be preserved. Whatever may be said for or against isolated aspects of a given effort at codification, it seems clear that there exists a compelling need for the federal government to operate under a rational, just and workable criminal code and that, consequently the concept of codification and the complementary aspects of revision and reform are objectives which the entire citizenry can and should support.

MODIFICATIONS AGREED TO IN THE BILL

Because of the size and complexity of this project, I determined when I decided to add my name as a co-sponsor in January that the first step was to instruct my staff to sit down with the staff of the Criminal Laws Subcommittee, the staffs of other interested Senators and representatives of the Justice Department and negotiate those changes which would improve the bill, but which did not involve major policy issues. The staff was also directed to isolate those policy questions for presentation to the Committee. This initial process has now been completed with the following significant modifications having been agreed to:

(1) The statute of limitations for failing to register under the selective services laws (5 years) begins to run at the time the duty to register ceases (age 26) instead of being indefinite;

(2) There is an absolute bar to trying an juvenile below the age of sixteen as an adult eliminating the "murder" exception in S. 1.

(3) In the treason section, the constitutional requirement that conviction "include the testimony of two witnesses to the same overt act" is added;

(4) In the treason and related crimes section, the modifier "armed" was added to the term "insurrection" in order to limit its scope.

(5) In the constitutionally sensitive section which punishes inciting the overthrow of the government by force, the "clear and present danger test" was added to the statutory language; new language was added requiring "active" membership in a group which the defendant specifically knows has the intent of overthrowing the government by force or violence; and the penalty for the offense was lowered from 15 to 7 years.

(6) The sabotage section which punishes one who damages certain specific property with an intent to impair the nation's ability to make war or engage in defense activities was modified. As the bill read, it included any property of the United States and any public facility. Language was added requiring that the property or facility be "used in or particularly suited for use in, the national defense".

(7) The grading of the offense of evading military service was reduced from a Class D felony (7 years) to a Class E (3 years), except in time of war.

(8) In the rape section, language was added barring the requirement of corroboration of the victim's testimony, and prohibiting the introduction into evidence of the victim's prior sexual conduct.

(9) In the Ellsberg case, the government attempted to convict him under the general theft sections of Title 18 on the theory that it had a "property right" in the Pentagon Papers (aside from the value of the actual Xerox paper). Since S. 1 has sections for prosecuting the disclosure of classified information, a bar to prosecution was added in the theft sections so that a person could not be prosecuted for both.

(10.) The scope of the federal riot statute was reduced by eliminating the provision which gave the federal government jurisdiction whenever the mails or a facility of interstate commerce was used to plan or carry out a riot. In addition, the definition of riot was narrowed to require "violent and tumultous conduct causing a grave danger of injury to persons or property" by at least 10 persons.

(11.) In the obscenity section, the constitutional phrase requiring that the material appeal "predominantly" to the prurient interest was added.

(12.) The section punishing disorderly conduct was narrowed to eliminate the following acts from the section: (a) making a loud noise; (b) using abusive or obscene language; and (c) soliicting a sexual act.

AMENDMENTS TO S. 1

While as I have indicated, I strongly support the need for codification of the criminal code, as one would expect with a project of this magnitude, there are a number of policy decisions reflected in the current draft of the bill with which I take strong exception. Accordingly, I am today proposing a number of specific changes in the statutory language.

The following are my specific proposals for modification of the draft bill. I do not mean that adoption of these amendments will satisfy all of my concerns. I have made sure that other Senators, with particular interests in specific areas, do plan to offer amendments covering other previsions with which I have a problem. Senators Kennedy and Mathias, for example, have developed special experience by virtue of hearings held last year by the Subcommittee on Constitutional Rights, Administrative Practices, and a special Ad Hoc Subcommittee of the Foreign Relations Committee in the wiretapping area. Senator Tunney has indicated a particular interest in the insanity defense. Senator Burdick, as Chairman of the Subcommittee on Penitentiaries, has amendments to the provisions relating to sentencing and parole. Senator Hart has, in the past, made a number of proposals in the area of firearms control and drug abuse. Other Senators, not on the Judiciary Committee, such as Senators Javits, Cranston, Nelson, and Moss have offered legislation which comes within the general purview of the federal criminal code.

OFFICIAL SECRETS

The sections of the Code which have drawn more public comment than any others are those relating to the control of information held by the government. This is understandable given the abuses of government secrecy over the last decade which were without precedent in our history. The sections involved are Subchapter C of Chapter 11 "Espionage and Related Offenses" and Subchapter D of Chapter 17 "Theft and Related Offenses".

The current espionage laws are contained in some twelve sections of Titles 18, 42 and 50 of the U.S. Code. Generally, these laws punish anyone who obtains a broadly defined category of information relating to defense matters with an intent that it be used to the injury of the United States or to the advantage of any foreign power. (18 U.S.C. 793 and 794) These sections have not been modified substantially since their enactment as part of the Espionage Act of 1917. Information "relating to the national defense" is not specifically defined. Communication of such information to any foreign government carries a 10 year maximum penalty. In addition, under the provisions of Section 783 of Title 50, it is a crime for a government employee to communicate any "classified" information to a foreign government. To the extent there

is classified information which would not fall within the broad definition of information "relating to the national defense" there is, under current law, no provision which punishes its disclosure except to a foreign government or agent thereof. It is worth noting that the law is unsettled as to whether the publication of classified information would constitute an offense under 50 U.S.C. 783, since by virtue of its publication it obviously becomes available to foreign governments. This was an issue in the Ellsberg case but was never settled because of the outrageous government misconduct which required dismissal of that indictment.

The current draft provisions of S. 1 in part codify present law, but also contain one notable expansion. Under Section 1124 a new offense is created which punishes the disclosure of any classified information held by a government employee or government contractor to anyone not authorized to receive it.

In my view, both the current statutes and the proposals contained in the bill are inadequate, and, indeed dangerous. The crux of the problem is that they attempt to deal with what are two quite separate problems in the same statutory provisions. One concerns the government's quite legitimate interest in protecting information relating to its military capabilities from access by potential foreign enemies. The other involves the highly suspect right of the government to withhold information from its own citizens. Accordingly, the amendment I will offer has been drafted to separate, as much as possible, these two interests.

Under my proposal, it will be an offense to transfer any classified information directly to a foreign power or agent thereof with an intent to injure the United States. If the classified information so transferred is especially sensitive "vital defense secrets", which is specifically defined in the statute as relating directly to certain military capabilities, the offense is a Class A felony in time of war and a Class B felony otherwise. If the information is classified but does not fall within this special category, the penalties are substantially lowered.

The more difficult question is what type of information is so essential to the security of the United States that the government can legitimately punish its disclosure by anyone, the first amendment notwithstanding. The approach of my proposed amendment in this area is two fold: *first*, it very precisely and narrowly defines the type of information covered; and *second*, it adopts an additional requirement taken from the Supreme Court's decision in the Pentagon Papers case that the information's disclosure must pose a "direct, immediate, and irreparable harm to the security of the United States". The amendment defines these "vital defense secrets" as those which "directly concern the operation of"

(a) cryptographic information regarding the nature, preparation, use or interpretation of a code, cipher, cryptographic system, or other method used for the purpose of disguising or concealing the contents of a communication by a foreign power or by the United States;

(b) operating plans for military combat operations;

(c) information regarding the actual method of operation of weapons system;

(d) restricted data as defined in Section 11 of the Atomic Energy Act of 1954.

In effect, what this amendment does is to adopt the constitutional standard which must be met before the government can impose a prior restraint on the publication of information as being likewise the appropriate standard for the criminal law. I strongly believe that in this way we can successfully balance the public right to know and the government's responsibility "to provide for the common defense". The language for this amendment has been worked out in a series of meetings with the Reporters Committee for Freedom of the Press and a number of attorneys representing a broad cross-section of the media.

Turning to the Chapter 17 offenses, there has been concern about the assertion by the government on several occasions in recent years that it had a property interest in certain types of information, and therefore, that anyone who disseminated such information could be charged with the theft of government property. As I have indicated, these sections have now been modified to exclude all classified information from their coverage, unless obtained by illegal entry. In my view, however, this does not completely take care of the problem. I have in mind incidents like one which occurred recently when the Chairman of the Federal Reserve Board called in the FBI to investigate the disclosure of certain financial information on consumer interest rates.

It is inconsistent with constitutional principles to allow the government to assert a proprietary interest in information generally. The amendment I will propose, therefore, will explicity state that the government has no property interest in information. I might note that this is a policy which is consistent with provisions of the copyright law which we adopted fifty years ago barring any copyright to the government. At the same time, the amendment would protect under separate sections a few, very specialized categories of materials including: information submitted in patent applications; certain "trade secrets" voluntarily submitted to government agencies; some types of confidential financial data on private individuals and corporations; and grand jury minutes. The amendment also adds a similar bar to prosecution under the related offense of defrauding the government contained in Chapter 13.

Under present Federal decisional law, the defense of entrapment, like other defenses, raises an issue of the accused's guilt or innocence. Thus, a successful claim of entrapment results in an acquittal on the theory that the *accused is innocent of the crime charged*. This is true in spite of the fact that the accused may have committed the proscribed acts with the forbidden intention. In fact, such an acquittal is the consequence less of the accused's innocence than of the government's wrongdoing, for it is conceived to be contrary to the congressional intent to convict one who might not have committed the offense without the active and energetic promptings of the government.

The defense of entrapment has an "origin-of-intent" emphasis. It seeks to determine whether it was the strength and persistence of the government's urging or the accused's own pre-existing criminal intention which gave rise to the conduct constituting an offense. The defense has, therefore, come to require both that: (a) the government has engaged in activities beyond the reasonable limits of those artifices or stratagems necessary to produce evidence of criminality, and that (b) the accused was not predisposed in fact or by reason of his past conduct to engage in the prohibited conduct. These twin elements of inducement and predisposition, when joined, form the presently recognized basis for the entrapment defense.

The proposed amendment changes the existing law by giving principal significance to the inducements of the government. Entrapment is continued as a defense to a crime, but the question of the accused's predisposition is removed and the issue is framed rather in the objective terms of whether persons at large who would not otherwise have done so would have been encouraged by the government's actions to engage in crime.

CONSPIRACY

The purpose of this amendment is to attempt to substantially narrow the present law of conspiracy. The exact origin of conspiracy theory in the common law apparently is not known. While it first received legislative recognition as early as 1305, it did not reach full maturity until the 17th century, when the criminal law experienced perhaps its greatest growth, largely at the hands of the infamous Star Chamber.

The modern crime of conspiracy has been defined as "so vague that it almost defies definition". This factor has resulted in widely varying definitions of the elements of this crime.

The first part of my amendment would explicitly reject the controversial doctrine laid down in *Pinkerton* v. *United States*, 328 U.S. 640 (1946). The effect of the *Pinkerton* doctrine is that mere membership in a conspiracy is sufficient not only for criminal liability as a conspirator but also for all specific offenses committed in furtherance of it. I believe that while conspiracy law is needed, particularly in organized crime and civil rights offenses, it can be a dangerous instrument and should be carefully controlled. Some have argued for the complete abolition of the offense. I am unwilling to go this far, but I am convinced that a modification of the *Pinkerton* doctrine is necessary to keep the offense under reasonable control.

The second part of this amendment would add to the general conspiracy statute, Section 1002, the requirement that in order to involve a particular defendant in a conspiracy charge he be guilty of some specific conduct which is "substantially corroborative" of his intent to engage in one of the criminal objectives of the conspiracy. This part of the amendment is an attempt to narrow what I believe is the over-breadth of the conspiracy laws by requiring a more substantial overt act than does present law by requiring a more substantial overt act in order for the government to bring an individual within the conspiracy net. Both of these recommendations follow those of the Brown Commission.

CRIMINAL SOLICITATION

There is, at present, no federal law of general applicability which prohibits an unsuccessful solicitation to commit a crime, although a few statutes define specific offense which contain language prohibiting solicitation such as 18 U.S.C. 201 that prohibits soliciting the payment of a bribe. The problem with this offense is its inherent overbreadth. All it requires is one person asking another if he is interested in committing any criminal act.

In my view, actions which come close to being criminal are adequately covered by the reach of the attempt provision which encompasses conduct that goes beyond "mere preparation" for the commission of the crime, and by the broad sweep of the conspiracy statutes. The Brown Commission was concerned by the scope of the solicitation provision and limited it to felonies only where the defendant engaged in a specific "overt act". While this is a possible compromise position, I believe the crime of solicitation should be eliminated entirely from the Code.

IMPAIRING MILITARY EFFECTIVENESS BY FALSE STATEMENT

Section 1114 of the Bill which punishes the "impairing of military effectiveness by false statement" likewise raises serious first amendment concerns. This section punishes conduct if, in time or war, an individual "with the intent to aid the enemy or to impair, interfere with, or obstruct the ability of the United States to engage in war or defense activities, communicates a statement of fact that is false, concerning: (1) losses, plans, operations, or conduct of the

military forces of the United States, of an associate nation, or of the enemy; (2) civilian or military catastrophe; or (3) any other matter of fact that, if believed, would be likely to affect the strategy or tactics of the military forces of the United States or would be likely to create general panic or serious disruption". The first amendment problem here is the danger of political prosecutions. This danger was recognized by Justice Holmes and Brandeis in their dissent in *Pierce v. United States* which affirmed the convictions of Socialist Party members in 1920 who distributed some 5,000 copies of an anti-war leaflet. The present version of the bill adopts the Holmes-Brandeis view that convictions under this section can only be sustained if the statements were, in fact, false and not expressions of opinion. The amendment that I am offering today, however, would go beyond this and require that the government show, as an element of the offense, that the defendant specifically knew that the information in this category was false when he communicated it. The government must have the ability, in time of war, to apprehend individuals who are knowingly publicizing false information concerning military matters, but the reach of the statute must be carefully circumscribed because of its closeness to rights protected under the first amendment. I believe that this amendment will provide such protections.

IMPAIRING MILITARY EFFECTIVENESS

Section 1112 of the proposed bill punishes as a felony anyone who "in reckless disregard of the risk that his conduct might impair, interfere with, or obstruct the ability of the United States or an associate nation to prepare for or to engage in war or defense activities, he engages in conduct (which) . . . damages, tampers with, contaminates, defectively makes, or defectively repairs . . . any property which (is) used in, or is particularly suited for use in, the national defense." Although this does not depart from present law, it has the potential for vast abuse in unstable times. I do not believe that reckless conduct should constitute a serious criminal offense when it involves property, even if that property can somehow be related to the national defense. Accordingly, I will move to strike this section in its entirety. If sabotage is intentional, it will be punished under Section 1111. In addition, there are provisions in Chapter 17 of the bill which punish as a Class A misdemeanor the destruction of government property.

OBSTRUCTING A GOVERNMENT FUNCTION BY PHYSICAL INTERFERENCE

This section again raises serious First Amendment concerns. As the bill now reads, it is a Class A misdemeanor for a person to "intentionally obstruct, impair, or pervert a government function by means of physical interference or obstacle." One of the most fundamental and cherished rights under the First Amendment is, of course, the right of peaceable assembly. Accordingly, any criminal offense which touches on this right must be closely circumscribed. The amendment I am recommending would add two additional clauses to this section. The first would provide a defense that would require the court to affirmatively determine that the physical interference charged was not a lawful assembly protected under the First Amendment. The second would narrow the definition of "interference" to require that the conduct disrupts an "essential" government function for a prolonged period, and in a "substantial" way.

INTERCEPTING CORRESPONDENCE

Several witnesses before the Criminal Laws Subcommittee also raised questions touching on the first amendment with regard to Section 1523 of the draft code which punishes anyone who intentionally "intercepts, opens, or reads private correspondence without prior consent." Although this section was designed only to cover actual tampering with the mails, the use of the term "reads" is overly broad. Accordingly, my amendment would limit the offense to one who "intercepts or opens private correspondence in transit."

DEMONSTRATING TO INFLUENCE A JUDICIAL PROCEEDING

This is still another section of the bill which raises serious first amendment concerns. The judicial process should, of course, be protected from undue influence. These protections must not, however, be allowed to infringe on the protected right of assembly. The draft of Section 1328 currently penalizes as a Class B misdemeanor one who "with intent to influence another person in the discharge of his duties in a judicial proceeding, pickets, parades, displays a sign, uses a sound amplifying device, or otherwise engages in a demonstration in, on the grounds of, or after notice of potential violation of this section, within 200 feet of . . . a courthouse or another building occupied by a person engaged in the discharge of judicial duties."

The amendment I offer will require a specific finding by the court that the conduct involved was not protected under the First Amendment and, in addition, would require a showing by the government that the conduct did, in fact, pose a serious threat to the integrity of the judicial process.

CRIMINAL CONTEMPT

In the comomn law, a judicial officer had virtually unlimited power to punish summarily any person in his courtroom whose conduct he did not like. The Congress has imposed some restraints on this power, as in Section 401 of Title 18 passed in 1831, but it remains today a glaring exception to normal due process requirements. Section 1331 codifies current law in limiting summary contempt power to a maximum penalty of six months. The draft also imposes restrictions on consecutive sentences. While it is obviously necessary for a judicial officer to be able to exercise some control over those who are participating in the judicial process, there is an obvious danger in such unbridled power. Accordingly, the amendment I am recommending would restrict summary contempt to an infraction (five days). Several other subsections of Chapter 13 including 1333—Refusing to Testify or to Produce Information; 1334—Obstructing a Proceeding by Disorderly Conduct; and 1335—Disobeying a Judicial Officer, seem to adequately cover serious disruption of the judicial process. The amendment also has the salutary result of interposing an impartial tribunal between the offending defendant and the offended judge prior to the imposition of an extended jail term. This was an alternative solution suggested by the Brown Commission.

In addition, the amendment I am recommending to the Committee would adopt language from Mr. Justice Black's opinion in *In Re McConnell* and require that the government show there was, in fact, an "actual obstruction of justice."

REFUSING TO TESTIFY BEFORE CONGRESS

The lawful committees of the Congress must, in order to properly fulfill their public duties, have the right to compel testimony. History has shown us, however, that on a few occasions this power can be subject to abuse. The draft provisions of the cade raise the penalty for such refusal from a misdemeanor, as in current law, to a Class E felony. Because of the possibility of abuse, I do not believe that this increase is justified. Thus, the amendment I will propose will reduce this offense to a Class A misdemeanor.

SIGMUND ARYWITZ, IN MEMORIUM

Mr. TUNNEY. Sigmund Arywitz was known as Siggy.

He was beloved in California as a persuasive crusader for human rights and personal dignity for all Americans.

He spoke with gentle voice but with booming convictions on America and the principles of individual freedom and self-worth on which the Nation stands.

Siggy shall be sorely missed.

As executive secretary for the Los Angeles Federation of Labor since 1967, he fought for the right of working men and women to get, what he called, "their fair share of the economic system."

But he was more than a forceful labor leader.

Siggy was a person of cultivated taste and exceptional insight into all the elements that join to strengthen the community and unify our society.

He had great wisdom and compassion, and tireless energy, and he gave selflessly of his time and his talents not only to the labor movement, but to the community at large.

I enjoyed his vigorous advocacy, admired his drive and his intellect, and I was shocked at his unexpected death on Tuesday.

Siggy was born in Buffalo, N.Y., took his degree from university there, served with the Army in World War II, then settled in California.

From 1949 to 1959, he was a director for the Pacific Region of the International Ladies Garment Workers. He then became a labor commissioner for California until he became the executive secretary of the Los Angeles Federation, second only in size to the one in Los Angeles.

From time to time, he and I disagreed, and I shall always respect his unfailing civility and meticulous attention to detail when he argued for his views.

Sigmund Arywitz invariably was forthright and always incisive.

Organized labor has lost a great advocate; California and the Nation have lost a vigorous champion for social progress; and those of us who knew him have lost an esteemed friend.

FORECLOSURE RELIEF PROGRAM DEFICIENCIES

Mr. MONDALE. Mr. President, the Congress has passed and, on July 2, 1975, the President signed into law the Emergency Homeowners' Relief Act. That act contained a mechanism for providing emergency payments to homeowners faced with foreclosure due to unemployment.

As the author and original sponsor of legislative proposals to provide foreclosure relief to citizens faced with the threat of the loss of their homes, I anxiously awaited HUD's first report to congress under the act.

That report has now arrived, Mr. President, and it is truly disappointing. HUD has failed to implement the foreclosure relief program. And, Mr. President, it now appears a reasonable possibility that it may never be implemented.